

REPORT

Of the Committee on Elections on the petition of John Biddle, contesting the election of Gabriel Richard.

JANUARY 13, 1824.

Read, and ordered to lie upon the table.

The Committee of Elections, to which was referred the petition of John Biddle, contesting the right of Gabriel Richard to a seat in this House, as a Delegate from the Territory of Michigan, have had the same under consideration; and

REPORT:

The petitioner objects to the right of the sitting Delegate to retain his seat, for the following reasons: 1st, That he is not a citizen of the United States, but, on the contrary, is an alien, owing allegiance to a foreign power; and that, although he has been naturalized before a court of the territory, yet that this court, not being of that description which, by the laws of the United States, is authorized to admit aliens to become citizens, his admission is of no validity.

2d. That, even admitting the authority of the court, the naturalization not having taken place one year previous to the election, he is still disqualified from retaining his seat. In entering upon the consideration of this subject, the first point that presents itself is the authority on which the right of a territory to be represented by a delegate in the House of Representatives is founded; and, next, the qualifications which it is requisite such delegates should possess. The office is one which is not provided for in the constitution. It grew out of the ordinance of Congress for the government of the Northwestern territory, passed anterior to the adoption of the constitution of the United States, and has formed the basis of all the territorial governments which have since existed. By that ordinance, no qualifications were required of the person elected a delegate; nor do the laws of the United States, which have been subsequently passed, in relation to the election of delegates from other territories, prescribe any. The committee will not attempt to discuss, much less to decide, the propriety of allowing persons who are not citizens of the United States, or who may owe allegiance to a foreign government, to hold seats in this House as delegates from territories. It will be sufficient

to state the fact, that there are no statutory provisions on the subject; and that, unless it can be deduced from the general principles of the constitution, there is no authority to exclude an alien from holding a seat in Congress as a delegate from a territory. The case under consideration does not, however, present itself in such manner as to render a decision of this point absolutely necessary. By the documents which have been referred, it appears that the sitting delegate is a native of France; that he emigrated to the United States in 1792, with an intention of residing therein; that he has so resided until the present time; that, in June, 1823, he made application to the court of Wayne county, in the territory of Michigan, then holden in the city of Detroit, and was admitted to become a citizen of the United States. The question now comes up for consideration, whether this court is of the description which have authority competent to perform acts of this kind? The act of Congress, passed the 14th of April, 1802, entitled "An act to establish a uniform rule of naturalization, and to repeal all the acts heretofore passed on that subject," provides that aliens may be admitted to become citizens of the United States by the "supreme, superior, district, or circuit court of some one of the States, or of the territorial jurisdictions of the United States, or a circuit or district court of the United States." In a law of Congress which was designed to confer jurisdiction on other courts than those of the United States, and which courts were possessed of different powers and variously constituted, it would be extremely difficult to describe each court by that name or appellation which it received in the law of the state or territory by which it was established. Besides, was such precision to be observed, Congress would be under the necessity of altering the law to meet every change which the different States might find it convenient to make in their judicial system, or otherwise the object of the law might, in some States, be entirely defeated. In making provision for the naturalization of foreigners, the intention of Congress obviously was to confide it to all courts which possessed those attributes that would render them safe depositories of the trust reposed. And the terms employed to describe them must be construed to relate to their powers and jurisdiction, and not to the name or appellation by which they were respectively designated in the laws of the states or territories in which they exist. That this is a fair construction will appear manifest from the provisions of the 3d section of the same act, which declares "that every court of record, in any individual state, having common law jurisdiction, and a seal, and clerk or prothonotary, shall be considered as a district court within the meaning of this act." The exceptions taken to the authority of a county court of a territory to admit aliens to become citizens of the United States is founded on the reference in this section to state courts, and the omission to include the courts of a similar character in the territories. But this section, it must be observed, is merely declaratory, and cannot justly be construed to contain any thing more than an explanation of what was intended to be understood by the terms "district and circuit court." Let us see

what is the interpretation. It is, "that every court of record which possesses certain other attributes, which are enumerated, is to be considered as a district court." Here is no new grant of power, but only a declaration of the character in which those courts are considered; and the omission of the territorial courts in this section cannot be construed to annul the grant of power contained in the 1st section. The reasons for enacting the 3d section was obviously to explain away certain doubts which appear by the preamble to have existed in regard to some of the courts in certain States; and the presumption is, that, in respect to the territorial courts, no such doubts were suggested: and hence the omission. Should this view of the subject be correct, there can be no doubt but that, by the laws of the United States, the county courts in the territory of Michigan are to be considered as district courts, and competent to admit aliens to become citizens of the United States; and that, as the sitting delegate was naturalized before one of those courts, he thereby became, and, in fact, now is, a citizen of the United States.

The committee will now proceed to the consideration of the second objection, viz: that, even admitting the validity of the naturalization, yet, as it did not take place one year before the election, the sitting delegate was not, at that time, legally qualified, inasmuch as he had not resided in the territory one year previous to the election in the quality of a citizen of the United States. The authority relied on to support this position is the act of Congress "authorizing the election of a delegate from the Michigan territory to the Congress of the United States, and extending the right of suffrage to the citizens of the said territory," passed the 16th of February, 1819. And the "act to amend the ordinance and acts of Congress for the government of the territory of Michigan, and for other purposes," passed the 3d of March, 1823. The former of these acts provides "that every free white male citizen of said territory, above the age of 21 years, who shall have resided therein one year next preceding the election," &c. shall be entitled to vote at such election for a delegate to the Congress of the United States. The latter act provides that all citizens of the United States having the qualifications prescribed by the act of the 16th February, 1819, shall be eligible to any office in said territory. The committee will not undertake to decide whether the station of delegate is such an office as comes within the meaning of this act; but, even admitting that it is, the conclusion will not prejudice the right of the sitting delegate to his seat. Neither of the acts referred to require that the person shall possess the qualifications enumerated at any other time than that at which the election takes place. It is not the citizen who is required to have resided in that quality for one year next preceding the election. It is the person, the individual, the man, who is spoken of, and who is to possess, the qualifications of residence, age, freedom, &c. at the time he offers to vote, or is to be voted for, or claims the privileges and franchises which those acts bestow. From a careful examination of the case in all its bearings and relations, the committee are impelled to the conclusion,

that the sitting delegate was, at the time of his election, a citizen of the United States, possessed of all the constitutional and legal qualifications to render him eligible to a seat in the present Congress, and do, therefore, submit the following resolution:

Resolved, That Gabriel Richard is entitled to a seat in this House as a Delegate from the Territory of Michigan.